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May 26, 1994

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MAY 26 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Ralph Haller, Chief  
Private Radio Bureau  
Federal Communications Commission  
2025 M Street, NW  
Room 5002  
Washington, DC 20554

Re: General Docket No. 90-314  
PP Docket No. 93-253

**EX PARTE PRESENTATION OF  
MINNESOTA EQUAL ACCESS NETWORK SERVICES, INC.**

Dear Mr. Haller:

Minnesota Equal Access Network Services, Inc. ("MEANS"), on behalf of its 57 owner telephone companies, and the 65 member telephone companies served by its network, by its attorneys, hereby submits these comments as requested by the Commission's PCS Task Force, pursuant to the ex parte meeting of MEANS with you and your staff on May 11, 1994. As discussed below, it is vital that the Commission recognize the important role that can be played by centralized equal access (CEA) providers in bringing personal communications service (PCS) and other emerging technologies to rural America, in keeping with Congress' stated goals in the Omnibus Budget Reconciliation Act of 1993.

MEANS and its member companies desire to provide PCS services in Minnesota, by using the existing MEANS fiber-based centralized equal access network, tandem switch, and SS7 infrastructure as the backbone for PCS services. However, MEANS and its member companies, who are rural telephone companies serving sparsely populated areas, may be effectively precluded from doing so by the Commission's cellular ownership restrictions for PCS, and the definition of the term "rural telephone company" adopted as part of the Commission's new spectrum auction rules. MEANS has vigorously participated in the Commission's PCS-related rulemakings, and has advocated that the cellular ownership restriction be eliminated as it applies to rural telephone companies having designated entity status. The purpose of this

document is to describe for the Commission the particular circumstance of CEA providers, and to demonstrate why the PCS and auction rules must be flexible enough to accommodate their participation, even if the very desirable reforms of the cellular ownership restriction and rural telephone definition are not adopted on a wholesale basis.

## **I. DESCRIPTION OF CENTRALIZED EQUAL ACCESS PROVIDERS**

MEANS operates a centralized equal access system which serves independent telephone companies throughout rural Minnesota, as authorized by this Commission and by the Minnesota Public Utilities Commission. The MEANS centralized equal access system serves 266 rural telephone exchanges, having approximately 205,000 access lines. The MEANS network includes fiber optic cable linking a tandem switch located in Plymouth, Minnesota, a suburb of Minneapolis, with nine Toll Transfer Points located near all of U S WEST Communications, Inc.'s existing Minnesota access tandems. The MEANS system permits interconnection with interexchange carriers, and provides a platform for the provision of other enhanced services, which require the use of SS7 signaling. Furthermore, the MEANS network is used to provide two-way interactive video services, including distance learning.

This network exhibits promising economics for the deployment of PCS throughout Minnesota, including rural areas. MEANS's centralized switching location in Plymouth provides an existing platform that will avoid the necessity of investing in multiple switches to provide PCS. Moreover, MEANS's statewide fiber network will minimize required investment in special access circuits to connect all sites to each other, and to the switch. In sum, the MEANS network already in place, in combination with PCS, can play an important role in bringing affordable advanced services to rural Minnesota in the shortest amount of time.

### **A. CENTRALIZED EQUAL ACCESS HAS BROUGHT LONG DISTANCE COMPETITION TO RURAL AMERICA**

The small size and remote rural location of MEANS' participating rural exchanges acts to discourage competing IXCs from extending lines to serve them. Prior to the authorization of the MEANS system, not one competing IXC had requested equal access at any of the 266 participating local exchanges. Consequently, the business and residential customers of the participating exchanges could obtain "1+" interLATA long distance service from AT&T only, and "1+" intraLATA long distance service from US WEST only. With the approval and implementation of the MEANS system, this situation dramatically improved. Rural Minnesota subscribers are now able to choose among a variety of long distance services, service options, and rates from 24 IXCs. The primary reason for this increased IXC competition is the aggregation and concentration of the long distance traffic of all participating local exchanges by

the MEANS centralized equal access system.

Furthermore, the MEANS network brings equal access to rural areas at a much lower cost to the participating LECs and their subscribers, than would have been incurred by converting the end offices to equal access on an individual basis. Significant economies of scale were realized by installing the hardware and software necessary for switching, recording, billing and related equal access functions in a single tandem switch operated on behalf of the participating LECs, rather than upgrading each of their end offices.

**B. CEA ALSO PROVIDES A PLATFORM FOR THE PROVISION OF OTHER SERVICES SUCH AS SS7.**

The Commission is aware of the many benefits associated with SS7 technology. An important benefit associated with centralized equal access is the potential reduction in post-dial delay. MEANS' network will permit independent LECs in Minnesota to actively and fully participate in the implementation of 800 data base and other SS7-enabled services. CEA systems provide a foundation for the efficient implementation of new technologies, such as MEANS' SS7 network that would otherwise not be economically feasible in rural areas.

**C. CEA NETWORKS CAN BE USED TO PROVIDE TWO-WAY INTERACTIVE VIDEO SERVICES, INCLUDING DISTANCE LEARNING.**

Centralized equal access networks create additional advantages. For example, the CEA infrastructure of South Dakota Network already serves as the platform for the provision of many services, including screening for wide area telephone service ("WATS") and WATS-type services; access to emergency medical services; and access to law enforcement, fire and other emergency services via Enhanced 911 service. In addition, the capacity of equal access networks will facilitate the delivery of a wide array of other services being discussed that require more bandwidth than traditional voice grade services, such as distance learning programs, telemedicine programs, and two-way interactive video transmissions for educational, medical and government use. Given the growing scarcity of medical, educational and other expert personnel and resources in rural areas, the benefits of CEA extend beyond merely bringing more competition to existing telecommunications services in rural areas. CEA makes possible services and capabilities that otherwise would not be available to these communities. It is hoped that PCS, with its high speed mobile data and mobile video capabilities, will further enhance these improvements to the safety, productivity and quality of life for rural Americans.

**D. RURAL NETWORKS OFFER THE SOLUTION TO PROVIDING RURAL AREAS IN MINNESOTA WITH UNIVERSAL INFORMATION ACCESS AND CAN PLAY AN IMPORTANT ROLE IN PCS DEPLOYMENT**

Congress' Office of Technology Assessment (OTA) and the Aspen Institute recognize the benefits of rural networks, such as MEANS, and encourage regulatory agencies to support their development in order to make up-to-date services viable in rural areas.

OTA acknowledges both the benefits of the use of fiber and the networking of that fiber. OTA noted that "[w]ith the deployment of advanced digital switches and fiber optics, . . . communication providers will be able to integrate services, transmitting two-way voice, data, and video on a joint basis. This prospect has particular relevance in rural areas, where the cost of providing any one of these services alone can be prohibitive." Office of Technology Assessment, Rural America at the Crossroads: Networking for the Future 82 (1991). In short, OTA recognizes the opportunity that fiber networks provide for rural subscribers in realizing economies of scale not otherwise available.

These economies of scale also are recognized by the Aspen Institute. Edwin B. Parker & Heather E. Hudson, Electronic Byways: State Policies for Rural Development Through Telecommunications (1992) (prepared for the Aspen Institute). The Aspen Institute characterizes centralized equal access providers, such as MEANS, as a mechanism for aggregating demand, and states that by aggregating demand, rural areas can develop economies of scale that foster the provision of new services. Id. at 78. As stated by OTA, "[i]f rural areas are to access advanced communications technologies in an economical fashion, it is critical that policymakers at the . . . Federal level[] think about and plan for such arrangements." OTA, supra, at 130. The Aspen Institute similarly encourages policymakers to consider "the larger economic and social context in which modern telecommunications operates, and explore new regulatory approaches that can unleash new applications and benefits that will contribute to economic development." Parker & Hudson, supra, at 80.

A number of panelists at the FCC's recent open forum on PCS noted the importance of utilizing existing infrastructure as a way to enhance the viability of PCS, especially in rural areas. E.g., Panel Discussion, Monday, April 11, 1994, Transcript, p. 147 ("Mon. Tr.") (referencing economies of scope). As demonstrated above, it took the combined efforts of numerous rural telephone companies to implement the CEA infrastructure which is bringing so many important benefits to rural areas. However, MEANS is concerned that the current broadband PCS rules will significantly hinder the introduction of personal communications services to rural Americans, despite Congress' recognition of the importance of this goal.

## **II. CEA PROVIDERS MUST BE VIEWED DIFFERENTLY FROM OTHER PCS APPLICANT GROUPS**

Unlike other groups which may be formed primarily for the purpose of obtaining a PCS license, CEA providers are collections of small telephone companies dedicated to bringing telecommunications services to rural areas, a fact which is easily verified. CEA providers have each obtained the approval of the Commission in order to establish their centralized equal access service, which is a matter of public record. Moreover, the bona fides of each CEA provider's members can be verified. These carriers have obtained all necessary public service commission certificates of public convenience and necessity, and have subjected themselves to strict regulation. They are dedicated to providing universal service within their certificated service areas. Most of these carriers have been in existence for decades, and have a long, documented history of service to their rural communities. When the Commission held lotteries to license cellular systems in the 1980's, these telephone companies concentrated on obtaining licenses for their certificated areas, rather than engaging in the mass filing strategies of others.

Many of these rural carriers are cooperatives, owned by the very citizens who depend on them for telephone and other services. These cooperatives arose from the need for infrastructure in areas where traditional for-profit entities did not see fit to extend service, because of the high costs involved. Other members are independent telephone companies owned by families living in these rural communities, and whose managers and employees are likewise residents of those communities. Unlike any other potential PCS applicants, these carriers will be responsive to the need for bringing emerging technologies to rural America, for reasons apart from any mandate by the Commission or Congress. As discussed below, the Commission has treated these entities differently in the past, and should continue to do so.

## **III. THE DEFINITION OF "RURAL TELEPHONE COMPANY" MUST BE FLEXIBLE ENOUGH TO INCLUDE CEA PROVIDERS.**

In its April 20, 1994 Second Report and Order in PP Docket No. 93-253, the Commission adopted the following definition of "rural telephone company," for purposes of deciding who will qualify for designated entity status and the benefits associated therewith: "A rural telephone company is an independently owned and operated local exchange carrier with 50,000 access lines or fewer, and serving communities with 10,000 or fewer inhabitants." 47 C.F.R. § 1.2110(b)(3). While most of the individual members of MEANS and other CEA providers will individually meet the 50,000 access line and 10,000 population criteria of this definition, these carriers will not be able to go it alone in the capital-intensive broadband PCS arena. However, if they attempt to bring PCS to their rural communities by applying through MEANS (or a

consortium with membership similar to MEANS), the Commission may find that the rural telephone designated entity is no longer "independently owned." Moreover, the Second Report and Order (at paragraph 286) states that "we reject proposals to accord preferences to consortia of otherwise eligible designated entities that, when combined, result in a new entity that does not meet our definitions." This ruling by the Commission would prevent MEANS from using the combined resources of its rural telephone members to bring PCS and other emerging technologies to rural areas, as MEANS has done with the numerous other advanced telecommunications services described above.

Again, the Commission should recognize that CEA providers are simply rural telephone companies which have found a way to bring viable services to the small communities they serve. As described above, these services have resulted in significantly improved and less expensive long distance service to rural Minnesota, as well as the benefits of innovations such as SS7 and distance learning which may not otherwise be available at all. CEA providers will likewise be dedicated to bringing PCS to these same rural areas.

Accordingly, MEANS requests that Rule Section 1.2110(b) (3) be revised to include the following exemption as Note 1:

Note 1: A corporation or partnership formed by small telephone companies for the purpose of bringing centralized equal access or other telecommunications benefits to rural communities will not be subject to the 50,000 access line or 10,000 population limits of this rule section, provided that it is a centralized equal access provider certified by the Commission pursuant to Section 214 of the Communications Act as of the effective date of the Omnibus Budget Reconciliation Act of 1993 (OBRA); or (1) each member telephone company of the applicant entity qualifies as a "rural telephone company," (2) each member telephone company operates at least one telephone exchange within the proposed license service area, and (3) each member telephone company existed as of the effective date of the OBRA.

#### **IV. THE CELLULAR OWNERSHIP RESTRICTIONS SHOULD BE CLARIFIED TO EXEMPT CEA PROVIDERS**

In the absence of an exemption from the cellular ownership restriction, CEA providers and their member rural telcos will be effectively precluded from participating in PCS by virtue of the accumulation of minority interests in a cellular license. Many rural telcos have less than a 20% interest in a cellular license, and even fewer exercise control over the cellular system in which

they have a minority interest. Some of these carriers are limited partners. However, under the current cellular ownership restriction (Rule Section 99.204), the fractional cellular interests of MEANS members would be added up. As a result, MEANS would collectively have a greater than 20% interest in several Minnesota BTAs that include the rural service areas of its members, and would thereby be precluded from bidding on adequate spectrum to bring mobile video and other advanced services to their communities. Because of the capital-intensive nature of broadband PCS, the individual members of MEANS and other CEA providers will not be able to participate in the auction process in any meaningful way unless they are allowed to band together, as they have done to bring so many other essential benefits to their subscribers.

The Commission can fashion a rule which recognizes the role of CEA providers (and similar consortia of bona fide rural telephone companies) in bringing improved telecommunications to their rural service areas. These CEA entities clearly cannot engage in the suppression of PCS competition, which the Commission apparently fears. This will be especially true when up to seven PCS competitors are licensed in a given Basic Trading Area (BTA).<sup>1</sup>

Accordingly, Rule Section 99.204<sup>2</sup> should be amended to include the following clarifying language:<sup>3</sup>

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<sup>1</sup> In this regard, the Omnibus Budget Reconciliation Act of 1993 does not prescribe a cellular cross-ownership restriction on rural telephone carriers or any other designated entities. In contrast to this silence on cellular interests, the Act and its legislative history is rife with mandates to facilitate meaningful participation by rural telephone companies in PCS.

<sup>2</sup> Rule Section 99.204 will be redesignated from Part 99 to the newly created Part 24 of the Commission's Rules, upon the effective date of the Commission's Order in General Docket No. 93-252, Mimeo No. FCC 94-115, released May 19, 1994.

<sup>3</sup> At least one of the existing centralized equal access providers certified by the Commission includes one member telephone company that meets the Commission's definition of a "small telephone company", but which may serve a community with a population of greater than 10,000. In particular, South Dakota Network, Inc. includes the City of Brookings Telephone Department, which serves a population of approximately 16,000. It is respectfully submitted that the membership of such small telephone companies (with less than 50,000 access lines) should not prevent the existing centralized equal access entities from participating in PCS. Accordingly, the proposed exemption (and proposed clarification of the rural telephone company definition, above) grandfathers the centralized equal access providers which were already certificated by the Commission when the spectrum auction

Note 3: A corporation or partnership formed by rural telephone companies for the purpose of bringing centralized equal access or other telecommunications benefits to rural communities will not be subject to the ownership attribution/population coverage limits of this rule section, provided that it is a centralized equal access provider certified by the Commission pursuant to Section 214 of the Communications Act as of the effective date of the Omnibus Budget Reconciliation Act of 1993 (OBRA); or (1) each member telephone company of the applicant entity qualifies as a rural telephone company, (2) each member telephone company individually would not surpass the cellular ownership benchmarks of this rule, (3) each member telephone company operates telephone exchanges within the proposed license service area, and (4) the applicant entity and each member telephone company existed as of the effective date of the OBRA.

Under the above definition, the Commission can be assured that CEA providers will not consist of newly created entities established to "game" the auction system, but instead will include only of bona fide rural telcos.

**A. GRANT OF AN EXEMPTION FOR MEANS AND OTHER RURAL TELEPHONE ENTITIES WOULD BE CONSISTENT WITH OTHER COMMISSION DECISIONS RECOGNIZING THE UNIQUE BENEFITS OF CENTRALIZED EQUAL ACCESS, AND WOULD BE CONSISTENT WITH CONGRESSIONAL INTENT**

A grant of the proposed exemptions for MEANS and other centralized equal access providers would be consistent with FCC precedent, and with suggestions by the Office of Technology Assessment of the U.S. Congress ("OTA") and the Aspen Institute for regulatory support for rural networks. See Section I.D, above.

The Commission has repeatedly recognized the unique features of centralized equal access networks. First, in granting Section 214 authority for the construction of these networks, the Commission has recognized the benefits to rural subscribers.<sup>4</sup>

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legislation was passed, since these entities were clearly not formed to posture for PCS auctions.

<sup>4</sup>See Memorandum Opinion, Order and Certificate (MIEAC), File No. W-P-C-6400, released Aug. 22, 1990 (Commission noting the advantages of competition in the interexchange market which is



Second, the Commission granted waivers of the equal access balloting deadlines for MEANS and other centralized equal access providers in order to permit member companies to coordinate the balloting for the entire systems, although conversions were spread over a range of dates.<sup>5</sup> Finally, in the Transport Rate Structure and Pricing proceeding, the Commission exempted centralized equal access providers, and LECs participating in such arrangements, from requirements to provide direct-trunked transport in recognition of their unique network configurations.<sup>6</sup>

Thus, there is ample precedent, grounded in the Commission's public interest mandate, to justify an explicit recognition of the important role CEA providers play in rural telecommunications. An exemption from the PCS/cellular restriction would only follow this precedent, and would simultaneously help ensure that Congress' stated policy objectives for rural participation in PCS are met.

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fostered by equal access networks, and that the MEANS network would bring equal access to a large number of rural subscribers); see also Memorandum, Opinion, Order and Certificate (SDCEA, Inc.), 5 FCC Rcd. 6978, 6981 (Dom. Fac. Div. 1990) ("potential for implementing in rural areas . . . the important Commission goal of making available more competitive, varied, high quality interstate services"); ; Memorandum Opinion, Order and Certificate (Iowa Network Access Division), 3 FCC Rcd. 1468, 1468 (Com. Car. Bur. 1988) (Commission priority to speed the availability of high quality, varied competitive services to small towns and rural areas), recon. denied, 4 FCC Rcd. 2201 (Com. Car. Bur. 1989); Memorandum Opinion, Order and Certificate (Indiana Switch Access Division), File No. W-P-C-5671, Mimeo No. 3652, released Apr. 10, 1986 (implementing equal access to subscribers who otherwise might be denied the benefits of IXC competition), review denied, 1 FCC Rcd. 634 (1986); Memorandum Opinion, Order and Certificate (Contel of Indiana), 3 FCC Rcd. 4298, 4301 (Com. Car. Bur. 1988) (equal access to be brought about sooner and less expensively, aggregation of access lines will be more attractive to competitive IXCs, and plan will reduce costs to IXCs).

<sup>5</sup>Order (NECA: Petition for Waiver of Equal Access Balloting Requirements), 6 FCC Rcd. 4789 (Com. Car. Bur. 1991) (MEANS); Order (NECA: Petition for Waiver of Equal Access Balloting Requirements), 7 FCC Rcd. 2364 (Com. Car. Bur. 1992) (SDN); Order (NECA: Petition for Waiver of Equal Access Balloting Requirements), 4 FCC Rcd. 3949 (Com. Car. Bur. 1989) (INS).

<sup>6</sup>Report and Order and Further Notice of Proposed Rulemaking (Transport Rate Structure and Pricing), 7 FCC Rcd. 7006, 7049 (1992), modified, 8 FCC Rcd. 5370, 5387 (1993); 47 C.F.R. § 69.112(f).

**V. RURAL TELCOS MUST HAVE MEANINGFUL BENEFITS IN ORDER TO PARTICIPATE**

Finally, the Commission must ensure that the benefits of being a rural telephone company are meaningful. The auction rules currently provide a bid credit only to the extent that the rural telco applicant proposes to exceed the already burdensome build-out requirements contained in the Commission's rules. For PCS, this requirement is ultimately 90% population coverage. Because rural telephone entities are restricted to applying for PCS licenses that include their rural service areas, these carriers will be implementing PCS in the highest cost, lowest density areas of the country. Their benefit should not be geared to exceeding the build-out requirement, when other designated entities can qualify for a bid credit in urban areas by simply meeting the construction requirements. The Commission should also set aside 30 MHz of spectrum to be applied for by qualified designated entities only. Without meaningful benefits, rural telephone status will not further Congress' goal of rural participation.

**VI. CEA PROVIDERS SHOULD NOT BE PROHIBITED FROM ENTERING INTO CONSORTIUM AGREEMENTS.**

Once a CEA provider has established its qualifications for an exemption from the cellular ownership restriction and rural telephone access line limit in accordance with the revised rule sections discussed above, it should be free to enter into a pre- or post-auction consortium, in the same fashion as any other designated entity. Even when pooling their resources through a CEA provider, rural telephone companies may still need capital in order to construct a viable PCS system, especially since they will be constructing in the high cost, low population density areas of the country. Accordingly, they should have the ability to form a consortium with venture capitalists or other entities in the same fashion as other designated entities.

### CONCLUSION

MEANS submits that it is uniquely situated to integrate PCS into its statewide fiber network, and has already demonstrated its ability and commitment to provide services to rural areas. MEANS thus requests the Commission to exempt centralized equal access providers and similar rural telephone company-owned entities from the cellular ownership restrictions for PCS licenses, and apply a more flexible definition of "rural telephone company" that will not exclude CEA providers. MEANS likewise urges the Commission to set aside 30 MHz of PCS frequency for designated entities.

Respectfully submitted,

**MINNESOTA EQUAL ACCESS NETWORK  
SERVICES, INC.**

By: 

Benjamin H. Dickens, Jr.  
John A. Prendergast  
Its Attorneys

cc: Greg Rosston  
Gerald P. Vaughan

**CERTIFICATE OF SERVICE**

I, John A. Prendergast, hereby certify that I am an employee in the Law Offices of Blooston, Mordkofsky, Jackson & Dickens and that on this 26th day of May, 1994, I caused to be hand-delivered a copy of the foregoing "**EX PARTE PRESENTATION OF MINNESOTA EQUAL ACCESS NETWORK SERVICES, INC.**" to the following:

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Federal Communications Commission  
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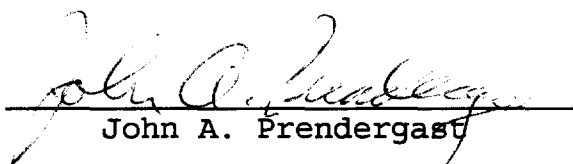
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